

**REMARKS****Regarding recent interview**

Applicant's representative gratefully acknowledges the courtesy extended by the Examiner during a telephonic interview that was conducted on September 3, 2010. As described more extensively in an Interview Summary filed by Applicant herewith, the Examiner and Applicant's representative discussed aspects of the §112 rejection of claim 17 and the §102 rejection in view of Smith (US 4,619,190). Applicant believes that agreement was reached as to the recited "user-selectable variable construction" language recited in claim 17. Additionally, the Gilbert reference applied in the §103 rejection was confirmed as being mistaken and Christen (US 3,856,374) was identified as being the intended reference.

**New claims 28-35**

In the present amendment, new independent claim 28 and dependent claims 29-35 are introduced. These are fully supported in Applicant's specification and do not introduce, nor rely upon introducing, any new matter.

For example, claim 28 recites that the claimed device includes a "grill for supporting an item to be heated" and that at least one panel, which may be selected by a user for inclusion in the designated first side, "directly supports the grill". This aspect is apparent in Applicant's disclosure, as originally filed, in Figs 3-6, 7A-7B and as explicitly described in the corresponding textual descriptions at:

- paragraph 32, first sentence,
- paragraph 33, fourth sentence,
- paragraph 37, second sentence, and
- paragraph 40, first sentence.

Claim 28 also recites that "the remainder of the frame attaches to at least one combination of multiple ones of the available panels vertically stacked along the first

side.” The Application shows vertically stacked panels in, for example, FIG 3 where panels 307, 302 and 304 are stacked in that order, from bottom-to-top, on both the ‘front’ and ‘back’ sides of a unit assembled in one particular configuration. This depicts one such “combination of multiple ones of the available panels vertically stacked along the first side.” An alternative combination is also shown in FIG 5 wherein the backside stack of panels has changed to have panel 304 on the bottom and then panel 307 above it. (Panel 304 is necessarily bottom-most on the backside in conjunction with having a panel 304 on the front side in order to support the grill along both front and back and to keep the grill level.)

Further supporting this recitation, see Applicant’s detailed description at paragraph 31, second sentence, which reads:

“By selection of side panels having a given dimension, or a combination of side panels stacked upon one another, grill 108 may be supported at a variety of positions within frame 100.”

See also paragraph 32, first sentence reading:

“In FIG 3, a pair of side panels, side panel 302 and side panel 307, have been ‘stacked’ in an arrangement along one side ...to cause the transverse support member or grill 108 to be supported at a particular elevation above heat source 315.”

The recitation imparts upon the remainder of the frame - the ‘receiver’ of the removably attached panels forming the first side - the ability to optionally accommodate multiple of the panels in combination, when needed for some heating applications such as the enclosed configuration depicted in FIG 3. The remainder of the frame, having its dimensions designed in conjunction with those of an array of available panels, must offer room for attachment that is sufficient for more than one of the available panels to be attached concurrently, when this is needed to achieve a desired cooking configuration.

Dependent claims 29-35 are notably similar to previously examined dependent claims 18 and 21-27 and other forms of dependent claims that have been present in the

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Application since the original filing. Adequacy of support for these dependent claims is believed to readily evident in the Application and has not been raised as an issue by the Office. Applicant believes that new dependent claims 29-35 raise no new issues in terms of support in Applicant's disclosure.

**Rejection of Claim 17 under 35 USC § 112**

In the recent Action, claim 17 was rejected under 35 USC §112, first paragraph, as allegedly failing to comply with the written description requirement and under 35 USC §112, second paragraph, as allegedly failing to particularly point out and claim the subject matter which Applicant regards as the invention. In response, Applicant cites previous arguments in the record with respect to support of the recited "user-selectable variable construction." (See, for example, Amendment/Reply filed by Applicant Jan. 29, 2010). At one point in time during prosecution, these showings and arguments of record had been deemed adequate (See Advisory Action dated Feb. 22, 2010.) During the recent interview, as indicated above, Applicant believes that agreement has now been reached as to this recitation and that no further argument need be presented herein. Applicant respectfully requests favorable consideration of this language and withdrawal of the rejection(s) made under 35 USC §112.

**Rejection of Claims 17-22 under 35 USC §102**

In the recent Action, claims 17 was rejected as allegedly being anticipated by Smith (US 4,619,190). Despite the lack of explanation by the Office in support of this rejection, Applicant has carefully reviewed the Smith reference for all that it teaches.

As currently amended, Applicant's independent claim 17 recites "one of the vertical sides being designated as a first side having user-selectable variable construction" and wherein the first side is constructed of at least one panel selected from a user from among a plurality of panels available for constructing the first side. Although Smith provides for an optional side cover 52 along one side and a combined top cover 54 and end cover 56 that are hinged together, Smith lacks any teaching as to a

single vertical side having, or being formed of, “a plurality of available panels available for constructing the side”, much less any attribute of variable configuration of such panels lending to “user-selectable variable construction” for the given side. With Smith, there is but one panel for a given side that is either installed as shown in Smith’s FIG 3 or not installed as shown in Smith’s FIG 4.

Furthermore, as currently amended, Applicant’s independent claim 17 recites that “the remainder of the frame attaches to a user-selected combination of multiple ones of the available panels vertically stacked along the first side.” (The explicit support in Applicant’s specification for this recitation has been identified above in discussing new independent claim 28.) Smith provides no teaching beyond the simple covers 52, 56 that each enclose a given side entirely or leave the side entirely open. (The Office seems to acknowledge some lacking of this nature in the later remarks in the Action concerning the §103 rejection, stating that “Smith discloses the claimed invention, except for the claimed substantially enclosed first proportion or panel supported height transverse member or fist [sic] quantity of panels available for constructing a first value, along with a variable attribute.”) Indeed, none of the vertical sides of Smith exhibit the optional stacking of panels along a given side as Applicant has described and claimed.

In contrast, Applicant recognizes useful benefits by choosing to create an enclosed side by stacking a plurality of panels rather than using a single solid panel. These benefits include finer control over both the degree of enclosure of the side and the height of a grill in many of the achievable configurations. (See Applicant’s paragraph 8, for example.)

Based upon the foregoing remarks, Applicant believes that the Smith reference fails to fulfill all of the elements recited in claim 17 and therefore does not anticipate claim 17. Claim 17 is believed to novel and allowable over the Smith reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the §102 rejection based on Smith.

Dependent claims 18-22 are believed to be allowable over Smith at least by virtue of their dependence from claim 17 and the above arguments as to the novel recitations

inherited from claim 17. Many of claims 18-22 are also considered to be distinguishable on their own merits.

Claim 18, as to the ability to use at least one panel (from claim 17) yet less than all of the available panels for constructing a given vertical side, is unachievable by Smith wherein only a single panel is provided for optionally enclosing a given side.

Claim 19 recites to the effect that the at least one panel selected by the user in forming the one side directly supports a transverse member or grill for suspending an item above the heat source within the frame. In contrast, Smith shows a wire frame that provides the general structure from which are hung 'baskets' containing either a combustible heat source or items to be heated, independently of the presence or absence of any side panels. The enclosing panels of Smith, when used, also hang from the same wire frame structure rather than lending support to, or determining the height of, a grill involved in holding up food items or the like.

Claim 22, wherein a vertical position at which the at least one panel selected by the user is attached to the remainder of the frame is selectable by the user from among more than one possible such position of attachment, is inapplicable to the teachings of Smith. None of the side panels assume more than one vertical position in the assembly, when used, nor are there any signs of features that would enable such adjustment. The manner by which the panels of Smith are engaged is quite different that the example joint that Applicant sets forth in FIG 2 as one way to enable setting panels at different vertical positions. Likewise, as to dependent claim 23, wherein this variable vertical position of attachment affects degree of enclosure and/or grill height, Smith offers no analog.

Claim 24 relates to changing the proportion of a side that is enclosed or the height of a grill by changing the quantity (among one or more than one) of panels involved in the one side. In contrast, Smith teaches using one panel to cover a given side.

Claim 25 relates to employing panels exhibiting different vertical heights when included along the first side. In contrast, Smith teaches but one panel for each side, the panel apparently having a vertical dimension sufficient to substantially enclose the entire side in all cases.

Claim 26 relates to using multiple panels along the first side and changing the above-or-below order of the panels to control the height of a grill. Smith does not use multiple panels along a side nor do the sides affect the height of a grill in any manner.

Claim 27 relates to selecting which one of the multiple panels used on a side are used to actually directly support a grill. Smith does not use multiple panels along a side nor do the sides affect the height of a grill in any manner.

In view of the foregoing remarks as to the distinction between the Smith reference and claims 17-27, Applicant respectfully requests that the §102 rejections as based on Smith be withdrawn and that all of these claims be allowed.

**Rejection of claims 23-24 under 35 USC §103**

In the recent Action, claims 23 and 24 were rejected under 35 USC §103 as being unpatentable over Smith in view of Gilbert (US 5,713,344), though it was later determined that the latter reference was intended to be Christen (US 3,856,374).

The remarks in the Action state that "Smith discloses the claimed invention, except for the claimed substantially enclosed first proportion or panel supported height transverse member or fist [sic] quantity of panels available for constructing a first value, along with a variable attribute." As best as Applicant can discern from this sentence, the Examiner looks to Christen to fulfill the lacking in Smith as to the variability of the attributes of enclosure or grill height based on how the given first side is constructed, citing to column 2, lines 30-63; column 3, lines 1-11 and Figures 1, 5, and 7 of the Christen reference.

Applicant contends that, as with Smith, the Christen reference offers no variability to remedy these shortcomings. Where Christen teaches sides that participate in supporting a grill, these sides are always constructed using the same parts (reference numerals 6 and 16) and these parts provide the same degree of enclosure whenever the unit is constructed. If the Office instead considers the 'front' of the Christen unit as corresponding to Applicant's recited 'first side' and looks to door 62 as being a panel, this is again a single part that encloses the entire front of the unit, rather than a composite

of several panels having any variability in configuration to affect the degree of enclosure. Applicant also notes the teaching of a swingable door 64 inset with door 62, but this fails to comply with Applicant's recitation as to having a plurality of panels available for constructing the one side by removably attachable to the remainder of the frame, much less are elements 62 and 64 able to be vertically stacked, one atop the other, to enclose the front side of the unit. Furthermore, neither of the members 62 or 64 of Christen affect the position of a grill. In generally, any three sides that would be construed as the 'remainder of the frame' in Christen would accommodate only one panel as taught, rather accommodating a vertical stack of panels as Applicant recites. For at least these reasons, even the combination of Smith and Christen fail to address every one of Applicant's recited limitations. Consequently, *prima facie* obviousness is not established by the combination of these references. Applicant contends that claims 23 and 24 are allowable and respectfully requests reconsideration and withdrawal of the §103 rejection of these claims.

**Smith reference with respect to new claims 28-35**

Applicant has carefully considered the cited Smith reference with respect to new claims 28-35 and offers the following remarks as to some readily apparent distinctions.

Claim 28 includes a recitation as to "wherein the at least one panel directly supports the grill". In Smith, the side panels 52, 56 offer no apparent support to a grill whatsoever, especially as the Smith apparatus operates in a substantially different 'sideways' fashion where there is no horizontal or transverse grill or the like being supported 'above' a heat source.

Claim 28 also recites that "the remainder of the frame attaches to at least one combination of multiple ones of the available panels vertically stacked along the first side." As explained before, Smith teaches a singular side panel for enclosing a given side and does not contemplate, nor provide features in support of, a vertical stacking of multiple panels along a given vertical side as Applicant has described and claimed. Applicant respectfully urges careful consideration and allowance of new claims 28-35 in view of these remarks.

CONCLUSION

Applicant respectfully requests that the Examiner reconsider the outstanding rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this Application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of these Remarks is respectfully requested.

Respectfully submitted,



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